

REFERENCE TITLE: **home loan regulations**

State of Arizona
House of Representatives
Forty-seventh Legislature
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2006

HB 2844

Introduced by
Representatives Garcia M, Burton Cahill, McCune Davis, Sinema: Aguirre A,
Alvarez, Bradley, Downing, Gallardo, Kirkpatrick, Lopes, Lopez L,
Prezelski

AN ACT

**AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 16; RELATING TO
HOME LOANS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 6, Arizona Revised Statutes, is amended by adding
3 chapter 16, to read:

4 CHAPTER 16

5 HOME LOANS

6 ARTICLE 1. GENERAL PROVISIONS

7 6-1601. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "AFFILIATE" MEANS A PERSON THAT CONTROLS, IS CONTROLLED BY OR IS
10 UNDER COMMON CONTROL WITH ANOTHER PERSON.

11 2. "BONA FIDE DISCOUNT POINTS" MEANS LOAN DISCOUNT POINTS THAT ARE
12 KNOWINGLY PAID BY THE BORROWER FOR THE PURPOSE OF REDUCING, AND THAT IN FACT
13 RESULT IN A BONA FIDE REDUCTION OF, THE ANNUAL PERCENTAGE RATE APPLICABLE TO
14 THE HOME LOAN BUT DOES NOT INCLUDE DISCOUNT POINTS IF THE ANNUAL PERCENTAGE
15 RATE OTHERWISE APPLICABLE TO THE LOAN EXCEEDS THE CONVENTIONAL MORTGAGE RATE
16 BY MORE THAN EITHER OF THE FOLLOWING:

17 (a) ONE AND ONE-HALF PERCENTAGE POINTS FOR A HOME LOAN SECURED BY A
18 FIRST LIEN.

19 (b) THREE PERCENTAGE POINTS FOR A HOME LOAN SECURED BY A JUNIOR LIEN.

20 3. "BORROWER" MEANS A NATURAL PERSON WHO IS OBLIGATED TO REPAY A HOME
21 LOAN, INCLUDING A COBORROWER, COSIGNER OR GUARANTOR.

22 4. "BRIDGE LOAN" MEANS A LOAN FOR THE INITIAL CONSTRUCTION OF A
23 BORROWER'S PRINCIPAL DWELLING ON LAND OWNED BY THE BORROWER WITH A MATURITY
24 OF LESS THAN EIGHTEEN MONTHS THAT REQUIRES ONLY THE PAYMENT OF INTEREST UNTIL
25 THE ENTIRE UNPAID BALANCE IS DUE AND PAYABLE.

26 5. "CONVENTIONAL MORTGAGE RATE" MEANS THE MOST RECENTLY PUBLISHED
27 ANNUAL YIELD ON CONVENTIONAL MORTGAGES PUBLISHED BY THE BOARD OF GOVERNORS OF
28 THE FEDERAL RESERVE SYSTEM AS OF THE FIFTEENTH DAY OF THE MONTH IMMEDIATELY
29 PRECEDING THE MONTH IN WHICH THE APPLICATION FOR THE EXTENSION OF CREDIT IS
30 RECEIVED BY THE CREDITOR.

31 6. "CONVENTIONAL PREPAYMENT PENALTY" MEANS A PREPAYMENT PENALTY OR FEE
32 THAT MAY BE COLLECTED IN A HOME LOAN AND THAT IS AUTHORIZED BY FEDERAL LAW
33 BUT DOES NOT APPLY IF THE HOME LOAN:

34 (a) HAS AN ANNUAL PERCENTAGE RATE THAT EXCEEDS THE CONVENTIONAL
35 MORTGAGE RATE BY MORE THAN TWO PER CENT.

36 (b) PERMITS PREPAYMENT FEES OR PENALTIES THAT EXCEED TWO PER CENT OF
37 THE AMOUNT PREPAID.

38 7. "CREDITOR" MEANS A PERSON WHO REGULARLY MAKES A HOME LOAN AND
39 INCLUDES A LOAN BROKER.

40 8. "HIGH COST HOME LOAN" MEANS A HOME LOAN IN WHICH EITHER:

41 (a) THE CONTRACT RATE EXCEEDS THE RATES THRESHOLD.

42 (b) THE TOTAL POINTS AND FEES EXCEED THE TOTAL POINTS AND FEES
43 THRESHOLD.

44 9. "HOME LOAN" MEANS A LOAN, INCLUDING AN OPEN-END CREDIT PLAN, OTHER
45 THAN A REVERSE MORTGAGE TRANSACTION OR A BRIDGE LOAN, IN WHICH THE PRINCIPAL

1 AMOUNT DOES NOT EXCEED THE CONFORMING LOAN SIZE LIMIT FOR A SINGLE-FAMILY
2 DWELLING AS ESTABLISHED BY THE FEDERAL NATIONAL MORTGAGE ASSOCIATION AND THAT
3 IS SECURED BY EITHER OF THE FOLLOWING:

4 (a) A MORTGAGE OR DEED OF TRUST ON REAL ESTATE IN THIS STATE ON WHICH
5 THERE IS LOCATED OR THERE WILL BE LOCATED A STRUCTURE AND BOTH OF THE
6 FOLLOWING APPLY:

7 (i) THE STRUCTURE IS DESIGNED PRINCIPALLY FOR OCCUPANCY BY ONE TO FOUR
8 FAMILIES.

9 (ii) THE STRUCTURE IS OR WILL BE OCCUPIED BY A BORROWER AS THE
10 BORROWER'S PRINCIPAL RESIDENCE.

11 (b) A SECURITY INTEREST ON A MANUFACTURED HOME THAT IS OR WILL BE
12 OCCUPIED BY A BORROWER AS THE BORROWER'S PRINCIPAL RESIDENCE.

13 10. "MANUFACTURED HOME":

14 (a) MEANS A STRUCTURE THAT IS TRANSPORTABLE IN ONE OR MORE SECTIONS
15 AND THAT, IN THE TRAVELING MODE, IS EIGHT BODY FEET OR MORE IN WIDTH OR FORTY
16 BODY FEET OR MORE IN LENGTH, OR, WHEN ERECTED ON SITE, IS THREE HUNDRED
17 TWENTY OR MORE SQUARE FEET, AND THAT IS BUILT ON A PERMANENT CHASSIS AND
18 DESIGNED TO BE USED AS A DWELLING WITH A PERMANENT FOUNDATION WHEN ERECTED ON
19 LAND SECURED IN CONJUNCTION WITH THE REAL PROPERTY ON WHICH THE MANUFACTURED
20 HOME IS LOCATED AND CONNECTED TO THE REQUIRED UTILITIES AND INCLUDES THE
21 PLUMBING, HEATING, AIR CONDITIONING AND ELECTRICAL SYSTEMS CONTAINED IN THE
22 STRUCTURE.

23 (b) INCLUDES ANY STRUCTURE THAT MEETS ALL OF THE REQUIREMENTS OF
24 SUBDIVISION (a) OF THIS PARAGRAPH EXCEPT THE SIZE REQUIREMENTS AND WITH
25 RESPECT TO WHICH THE MANUFACTURER VOLUNTARILY FILES A CERTIFICATION REQUIRED
26 BY THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN
27 DEVELOPMENT AND COMPLIES WITH THE STANDARDS ESTABLISHED UNDER THE FEDERAL
28 NATIONAL MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS ACT OF 1974
29 (P.L. 93-383; 88 STAT. 700; 42 UNITED STATES CODE SECTION 5401).

30 (c) DOES NOT INCLUDE RENTAL PROPERTY OR SECOND HOMES OR MANUFACTURED
31 HOMES IF NOT SECURED IN CONJUNCTION WITH THE REAL PROPERTY ON WHICH THE
32 MANUFACTURED HOME IS LOCATED.

33 11. "POINTS AND FEES" MEANS:

34 (a) ALL AMOUNTS PAYABLE BY A BORROWER AT OR BEFORE THE CLOSING OF A
35 HOME LOAN, EXCLUSIVE OF ANY TIME-PRICE DIFFERENTIAL DUE AT CLOSING ON THE
36 LOAN PROCEEDS, INCLUDING LOAN DISCOUNT POINTS OR OTHER DISCOUNTS, LOAN FEES,
37 FINDER'S FEES OR SIMILAR CHARGES AND FEES FOR PREPARATION OF LOAN RELATED
38 DOCUMENTS. POINTS AND FEES DO NOT INCLUDE FEES OR CHARGES FOR THE FOLLOWING
39 PURPOSES IF THE AMOUNTS ARE BONA FIDE AND REASONABLE AND PAID TO A PERSON
40 OTHER THAN THE CREDITOR OR AN AFFILIATE OF THE CREDITOR:

41 (i) SERVICE OR CARRYING CHARGES.

42 (ii) CREDIT REPORTS.

43 (iii) TITLE EXAM, TITLE INSURANCE OR SIMILAR PURPOSES.

44 (iv) ESCROW CHARGES FOR FUTURE PAYMENTS OF TAXES AND INSURANCE.

45 (v) FEES FOR NOTARIZING DEEDS AND OTHER DOCUMENTS.

1 (vi) APPRAISALS, INCLUDING FEES RELATED TO ANY PEST INFESTATION OR
2 FLOOD HAZARD INSPECTIONS CONDUCTED BEFORE CLOSING.

3 (vii) INSPECTIONS PERFORMED BEFORE CLOSING.

4 (viii) ATTORNEY FEES, IF THE BORROWER HAS THE RIGHT TO SELECT THE
5 ATTORNEY FROM AN APPROVED LIST OR OTHERWISE.

6 (ix) FIRE AND HAZARD INSURANCE AND FLOOD INSURANCE PREMIUMS IF THE
7 CONDITIONS IN 12 CODE OF FEDERAL REGULATIONS SECTION 226.4(d)(2) (1981) ARE
8 MET.

9 (x) TAX PAYMENT SERVICES.

10 (xi) SURVEYS.

11 (xii) FLOOD CERTIFICATION.

12 (xiii) PEST INFESTATION AND FLOOD DETERMINATION.

13 (b) ALL COMPENSATION PAID DIRECTLY OR INDIRECTLY TO A MORTGAGE BROKER,
14 INCLUDING A BROKER THAT ORIGINATES A LOAN IN ITS OWN NAME IN A TABLE FUNDED
15 TRANSACTION.

16 (c) THE MAXIMUM PREPAYMENT FEES AND PENALTIES THAT MAY BE CHARGED OR
17 COLLECTED UNDER THE TERMS OF THE HOME LOAN DOCUMENTS.

18 (d) ALL PREPAYMENT FEES OR PENALTIES THAT ARE INCURRED BY THE BORROWER
19 IF THE HOME LOAN REFINANCES A PREVIOUS HOME LOAN MADE OR CURRENTLY HELD BY
20 THE SAME CREDITOR OR IS CURRENTLY HELD BY AN AFFILIATE OF THE CREDITOR.

21 (e) THE COST OF ALL PREMIUMS FINANCED BY THE CREDITOR, DIRECTLY OR
22 INDIRECTLY, FOR ANY CREDIT LIFE, CREDIT DISABILITY, CREDIT UNEMPLOYMENT OR
23 CREDIT PROPERTY INSURANCE OR ANY OTHER LIFE OR HEALTH INSURANCE OR ANY
24 PAYMENTS FINANCED BY THE CREDITOR, DIRECTLY OR INDIRECTLY, FOR ANY DEBT
25 CANCELLATION OR SUSPENSION AGREEMENT OR CONTRACT, EXCEPT THAT INSURANCE
26 PREMIUMS CALCULATED AND PAID ON A MONTHLY BASIS ARE NOT FINANCED BY THE
27 CREDITOR.

28 (f) FOR OPEN-END LOANS, THE POINTS AND FEES INCLUDED IN SUBDIVISIONS
29 (a) THROUGH (e) OF THIS PARAGRAPH THAT ARE KNOWN AT OR BEFORE CLOSING PLUS
30 THE MINIMUM ADDITIONAL FEES THE BORROWER WOULD BE REQUIRED TO PAY TO DRAW
31 DOWN AN AMOUNT EQUAL TO THE TOTAL CREDIT LINE.

32 12. "RATE THRESHOLD" MEANS:

33 (a) FOR A FIRST LIEN MORTGAGE HOME LOAN, AN INTEREST RATE EQUAL TO
34 SEVEN PERCENTAGE POINTS OVER THE WEEKLY AVERAGE YIELD ON COMPARABLE UNITED
35 STATES TREASURY SECURITIES ON THE FIFTEENTH DAY OF THE MONTH IMMEDIATELY
36 PRECEDING THE MONTH IN WHICH THE LOAN IS MADE.

37 (b) FOR A SUBORDINATE LIEN MORTGAGE HOME LOAN, AN INTEREST RATE EQUAL
38 TO NINE PERCENTAGE POINTS OVER THE WEEKLY AVERAGE YIELD ON COMPARABLE UNITED
39 STATES TREASURY SECURITIES ON THE FIFTEENTH DAY OF THE MONTH IMMEDIATELY
40 PRECEDING THE MONTH IN WHICH THE LOAN IS MADE.

41 13. "TOTAL POINTS AND FEES" MEANS THE RESULT OBTAINED BY SUBTRACTING
42 THE SUM OF THE CONVENTIONAL PREPAYMENT PENALTIES AND THE BONA FIDE DISCOUNT
43 POINTS PAID FROM THE SUM OF THE POINTS AND FEES, EXCEPT THAT IF THE SUM OF
44 THE CONVENTIONAL PREPAYMENT PENALTIES AND THE BONA FIDE DISCOUNT POINTS PAID

EXCEEDS TWO POINTS, ONLY THE AMOUNT THAT REPRESENTS TWO POINTS SHALL BE SUBTRACTED.

14. "TOTAL POINTS AND FEES THRESHOLD" MEANS:

(a) FOR A HOME LOAN IN WHICH THE TOTAL PRINCIPAL LOAN AMOUNT IS TWENTY THOUSAND DOLLARS OR MORE, AN AMOUNT EQUAL TO FIVE PER CENT OF THE TOTAL PRINCIPAL LOAN AMOUNT.

(b) FOR A HOME LOAN IN WHICH THE TOTAL PRINCIPAL LOAN AMOUNT IS LESS THAN TWENTY THOUSAND DOLLARS, AN AMOUNT EQUAL TO THE LESSER OF ONE THOUSAND DOLLARS OR EIGHT PER CENT OF THE TOTAL PRINCIPAL LOAN AMOUNT.

6-1602. Prohibited practices; home loans

A. IN MAKING A HOME LOAN, A CREDITOR SHALL NOT FINANCE, DIRECTLY OR INDIRECTLY, CREDIT LIFE, CREDIT DISABILITY, CREDIT UNEMPLOYMENT OR CREDIT PROPERTY INSURANCE OR ANY OTHER LIFE OR HEALTH INSURANCE OR ANY PAYMENTS DIRECTLY OR INDIRECTLY FOR ANY DEBT CANCELLATION OR SUSPENSION AGREEMENT OR CONTRACT. NOTHING IN THIS SUBSECTION PROHIBITS THE PAYMENT OR RECEIPT OF INSURANCE PREMIUMS OR DEBT CANCELLATION OR SUSPENSION FEES CALCULATED ON THE UNPAID BALANCE OF A HOME LOAN AND PAID ON A MONTHLY BASIS OR BONA FIDE CREDIT PROPERTY INSURANCE REQUIRED BY THE FEDERAL HOUSING ADMINISTRATION OR THE UNITED STATES DEPARTMENT OF AGRICULTURE TO BE PAID IN A SINGLE PREMIUM TO THE RESPECTIVE FEDERAL AGENCY. FOR THE PURPOSES OF THIS SUBSECTION, "CREDIT PROPERTY INSURANCE" MEANS PROPERTY INSURANCE WRITTEN IN CONNECTION WITH CREDIT TRANSACTIONS UNDER WHICH THE CREDITOR IS THE PRIMARY BENEFICIARY.

B. A CREDITOR MAKING OR ARRANGING A HOME LOAN SHALL NOT ENGAGE IN THE UNFAIR ACT OR PRACTICE OF FLIPPING A HOME LOAN. FOR THE PURPOSES OF THIS SUBSECTION, "FLIPPING A HOME LOAN" MEANS MAKING A HOME LOAN TO A BORROWER WHO REFINANCES AN EXISTING HOME LOAN IF THE NEW LOAN DOES NOT HAVE A REASONABLE, TANGIBLE NET BENEFIT TO THE BORROWER CONSIDERING ALL OF THE CIRCUMSTANCES, INCLUDING THE TERMS OF BOTH THE NEW AND REFINANCED LOANS, THE COST OF THE NEW LOAN AND THE BORROWER'S CIRCUMSTANCES.

6-1603. Prohibited practices; high cost home loans

A. A CREDITOR MAKING A HIGH COST HOME LOAN SHALL NOT DIRECTLY OR INDIRECTLY FINANCE ANY POINTS OR FEES IN EXCESS OF TWO PER CENT OF THE PRINCIPAL LOAN AMOUNT.

B. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN THAT CONTAINS A SCHEDULED PAYMENT THAT IS MORE THAN TWICE AS LARGE AS THE AVERAGE OF EARLIER SCHEDULED PAYMENTS. THIS SUBSECTION DOES NOT APPLY IF THE PAYMENT SCHEDULE IS ADJUSTED TO THE SEASONAL OR IRREGULAR INCOME OF A BORROWER.

C. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN THAT INCLUDES PAYMENT TERMS UNDER WHICH THE OUTSTANDING PRINCIPAL BALANCE WILL INCREASE AT ANY TIME OVER THE COURSE OF THE LOAN BECAUSE THE REGULAR PERIODIC PAYMENTS DO NOT COVER THE FULL AMOUNT OF INTEREST DUE.

D. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN THAT CONTAINS A PROVISION THAT INCREASES THE INTEREST RATE AFTER DEFAULT. THIS SUBSECTION DOES NOT APPLY TO INTEREST RATE CHANGES IN A VARIABLE RATE LOAN OTHERWISE CONSISTENT WITH THE PROVISIONS OF THE LOAN DOCUMENTS IF THE CHANGE IN THE

1 INTEREST RATE IS NOT TRIGGERED BY THE EVENT OF DEFAULT OR THE ACCELERATION OF
2 THE INDEBTEDNESS.

3 E. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN THAT INCLUDES TERMS
4 UNDER WHICH MORE THAN TWO PERIODIC PAYMENTS REQUIRED UNDER THE LOAN ARE
5 CONSOLIDATED AND PAID IN ADVANCE FROM THE LOAN PROCEEDS PROVIDED TO THE
6 BORROWER.

7 F. WITHOUT REGARD TO WHETHER A BORROWER IS ACTING INDIVIDUALLY OR ON
8 BEHALF OF OTHERS SIMILARLY SITUATED, A PROVISION OF A HIGH COST HOME LOAN
9 AGREEMENT THAT ALLOWS A PARTY TO REQUIRE A BORROWER TO ASSERT ANY CLAIM OR
10 DEFENSE IN A FORUM THAT IS LESS CONVENIENT, MORE COSTLY OR MORE DILATORY FOR
11 THE RESOLUTION OF A DISPUTE THAN A JUDICIAL FORUM WHERE THE BORROWER MAY
12 OTHERWISE PROPERLY BRING A CLAIM OR DEFENSE OR LIMITS IN ANY WAY ANY CLAIM OR
13 DEFENSE THE BORROWER MAY HAVE IS UNCONSCIONABLE AND VOID.

14 G. AFTER _____, A CREDITOR SHALL NOT MAKE A HIGH COST HOME
15 LOAN WITHOUT FIRST RECEIVING CERTIFICATION FROM A THIRD-PARTY NONPROFIT
16 COUNSELOR APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN
17 DEVELOPMENT, A STATE HOUSING FINANCING AGENCY OR THE SUPERINTENDENT OF
18 FINANCIAL INSTITUTIONS THAT THE BORROWER HAS RECEIVED COUNSELING ON THE
19 ADVISABILITY OF THE LOAN TRANSACTION.

20 H. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN UNLESS A REASONABLE
21 CREDITOR WOULD BELIEVE AT THE TIME THE LOAN IS CLOSED THAT THE RESIDENT
22 BORROWER WILL BE ABLE TO MAKE THE SCHEDULED PAYMENTS ASSOCIATED WITH THE LOAN
23 BASED ON A CONSIDERATION OF THE RESIDENT BORROWER'S CURRENT AND EXPECTED
24 INCOME, CURRENT OBLIGATIONS, EMPLOYMENT STATUS AND OTHER FINANCIAL RESOURCES,
25 OTHER THAN EQUITY IN THE COLLATERAL THAT SECURES REPAYMENT OF THE LOAN, AS
26 VERIFIED BY DETAILED DOCUMENTATION OF ALL SOURCES OF INCOME AND CORROBORATED
27 BY INDEPENDENT VERIFICATION. THERE IS A REBUTTABLE PRESUMPTION THAT THE
28 RESIDENT BORROWER WILL BE ABLE TO MAKE THE SCHEDULED PAYMENTS TO REPAY THE
29 OBLIGATION IF, AT THE TIME THE LOAN IS CONSUMMATED, THE RESIDENT BORROWER'S
30 TOTAL MONTHLY DEBTS, INCLUDING AMOUNTS OWED UNDER THE LOAN, DO NOT EXCEED
31 FIFTY PER CENT OF THE BORROWER'S MONTHLY GROSS INCOME AND THE CREDITOR
32 FOLLOWS THE RESIDUAL INCOME GUIDELINES ESTABLISHED IN 38 CODE OF FEDERAL
33 REGULATIONS SECTION 36.4337(e) (1994) AND DEPARTMENT OF VETERANS AFFAIRS LOAN
34 ANALYSIS FORM 26-6393.

35 I. A CREDITOR SHALL NOT PAY A CONTRACTOR UNDER A HOME IMPROVEMENT
36 CONTRACT FROM THE PROCEEDS OF A HIGH COST HOME LOAN UNLESS BOTH OF THE
37 FOLLOWING APPLY:

38 1. THE CREDITOR IS PRESENTED WITH A SIGNED AND DATED COMPLETION
39 CERTIFICATE SHOWING THAT THE HOME IMPROVEMENTS HAVE BEEN COMPLETED.

40 2. THE INSTRUMENT IS PAYABLE JOINTLY TO THE BORROWER AND THE
41 CONTRACTOR OR, AT THE ELECTION OF THE BORROWER, THROUGH A THIRD-PARTY ESCROW
42 AGENT IN ACCORDANCE WITH TERMS ESTABLISHED IN A WRITTEN AGREEMENT SIGNED BY
43 THE BORROWER, THE CREDITOR AND THE CONTRACTOR BEFORE THE DISBURSEMENT.

1 J. A CREDITOR SHALL NOT CHARGE A BORROWER ANY FEES OR OTHER CHARGES,
2 OTHER THAN THOSE THAT ARE BONA FIDE, REASONABLE AND ACTUAL, TO MODIFY, RENEW,
3 EXTEND OR AMEND A HIGH COST HOME LOAN.

4 K. A CREDITOR SHALL NOT CHARGE A BORROWER MORE THAN SEVENTY-FIVE
5 DOLLARS TO DEFER ANY PAYMENT DUE UNDER THE TERMS OF A HIGH COST HOME LOAN.

6 L. A CREDITOR SHALL NOT RECOMMEND OR ENCOURAGE DEFAULT ON AN EXISTING
7 LOAN OR OTHER DEBT PRIOR TO AND IN CONNECTION WITH THE CLOSING OR PLANNED
8 CLOSING OF A HIGH COST HOME LOAN THAT REFINANCES ALL OR ANY PORTION OF THE
9 EXISTING LOAN OR DEBT.

10 M. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN THAT PROVIDES FOR A
11 LATE PAYMENT FEE EXCEPT AS FOLLOWS:

12 1. THE LATE PAYMENT FEE SHALL NOT BE IN EXCESS OF FIVE PER CENT OF THE
13 AMOUNT OF THE PAYMENT PAST DUE.

14 2. THE LATE PAYMENT FEE SHALL BE ASSESSED ONLY FOR A PAYMENT PAST DUE
15 FOR FIFTEEN DAYS OR MORE.

16 3. THE LATE PAYMENT FEE SHALL NOT BE IMPOSED MORE THAN ONCE WITH
17 RESPECT TO A SINGLE LATE PAYMENT AND A LATE PAYMENT FEE SHALL NOT BE CHARGED
18 WITH RESPECT TO A SUBSEQUENT PAYMENT THAT WOULD HAVE BEEN A FULL PAYMENT BUT
19 FOR THE PREVIOUS DEFAULT OR THE IMPOSITION OF THE PREVIOUS LATE PAYMENT FEE.

20 4. A LATE PAYMENT FEE SHALL NOT BE CHARGED UNLESS THE CREDITOR
21 NOTIFIES THE BORROWER WITHIN FORTY-FIVE DAYS FOLLOWING THE DATE THE PAYMENT
22 WAS DUE THAT A LATE PAYMENT FEE HAS BEEN IMPOSED FOR A PARTICULAR LATE
23 PAYMENT. A LATE PAYMENT FEE THAT THE CREDITOR HAS COLLECTED SHALL BE
24 REIMBURSED IF THE BORROWER PRESENTS PROOF OF HAVING MADE A TIMELY PAYMENT.

25 5. A CREDITOR SHALL TREAT EACH PAYMENT AS POSTED ON THE SAME BUSINESS
26 DAY AS IT WAS RECEIVED BY THE CREDITOR, SERVICE OR CREDITOR'S AGENT OR AT THE
27 ADDRESS PROVIDED TO THE BORROWER BY THE CREDITOR, SERVICE OR CREDITOR'S AGENT
28 FOR MAKING PAYMENTS.

29 N. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN THAT CONTAINS A
30 PROVISION THAT PERMITS THE CREDITOR, IN ITS SOLE DISCRETION, TO ACCELERATE
31 THE INDEBTEDNESS, PROVIDED THAT THIS PROVISION DOES NOT PROHIBIT ACCELERATION
32 OF A LOAN IN GOOD FAITH DUE TO A BORROWER'S FAILURE TO ABIDE BY THE MATERIAL
33 TERMS OF THE LOAN.

34 O. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN THAT CONTAINS A
35 PROVISION THAT REQUIRES A PENALTY OR PREMIUM FOR PREPAYMENT OF THE BALANCE OF
36 THE INDEBTEDNESS.

37 P. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN UNLESS THE CREDITOR
38 HAS GIVEN THE FOLLOWING NOTICE, OR A SUBSTANTIALLY SIMILAR NOTICE, IN
39 WRITING, TO THE BORROWER, ACKNOWLEDGED IN WRITING AND SIGNED BY THE BORROWER
40 NOT LATER THAN THE TIME THE NOTICE IS REQUIRED UNDER THE NOTICE PROVISION
41 CONTAINED IN 12 CODE OF FEDERAL REGULATIONS SECTION 226.31(c)(1995):

42 NOTICE TO BORROWER

43 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A
44 LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN
45 RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES

VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER YOU SELECT.

IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.

YOU SHOULD CONSULT AN ATTORNEY AND A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY CONTACTING [INSERT APPLICABLE AGENCY, WEBSITE AND/OR TELEPHONE NUMBER].

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.

Q. A CREDITOR MAY NOT CHARGE A FEE FOR INFORMING OR TRANSMITTING TO ANY PERSON THE BALANCE DUE TO PAY OFF A HIGH COST HOME LOAN OR TO PROVIDE A RELEASE ON PREPAYMENT. PAYOFF BALANCES SHALL BE PROVIDED WITHIN A REASONABLE TIME, BUT NOT MORE THAN SEVEN BUSINESS DAYS AFTER THE REQUEST.

R. A CREDITOR MAKING A HIGH COST HOME LOAN MAY NOT KNOWINGLY REFINANCE AN EXISTING HOME LOAN, BASED ON INFORMATION IN THE BORROWER'S CREDIT REPORT OR OTHERWISE IN THE POSSESSION OF THE CREDITOR, THAT IS A SPECIAL MORTGAGE ORIGINATED, SUBSIDIZED OR GUARANTEED BY OR THROUGH A STATE, TRIBAL OR LOCAL GOVERNMENT OR NONPROFIT ORGANIZATION OR THAT EITHER BEARS A BELOW MARKET INTEREST RATE AT THE TIME OF ORIGINATION OR HAS NONSTANDARD PAYMENT TERMS BENEFICIAL TO THE BORROWER, SUCH AS PAYMENTS THAT VARY WITH INCOME OR ARE LIMITED TO A PERCENTAGE OF INCOME OR IN WHICH NO PAYMENTS ARE REQUIRED UNDER SPECIFIED CONDITIONS, IF, AS A RESULT OF THE REFINANCING, THE BORROWER WILL LOSE ONE OR MORE OF THE BENEFITS OF THE SPECIAL MORTGAGE.

S. A CREDITOR WHO PRIMARILY USES A LANGUAGE OTHER THAN ENGLISH TO COMMUNICATE WITH THE BORROWER ABOUT THE TERMS OF A HIGH COST HOME LOAN THAT THE CREDITOR IS MAKING OR ARRANGING FOR THE BORROWER SHALL DELIVER TO THE BORROWER AN UNEXECUTED TRANSLATION OF THE LOAN DOCUMENTS IN THE LANGUAGE THAT THE CREDITOR PRIMARILY USED IN ITS COMMUNICATIONS WITH THE BORROWER. DELIVERY OF THE NONENGLISH LOAN DOCUMENTS SHALL BE MADE TO THE BORROWER

1 BEFORE THE BORROWER EXECUTES ANY DOCUMENTS AT THE LOAN CLOSING. THE BORROWER
2 SHALL EXECUTE THE ENGLISH LANGUAGE LOAN DOCUMENTS.

3 6-1604. Default; notice; right to cure

4 A. BEFORE AN ACTION IS FILED TO FORECLOSE OR COLLECT MONEY DUE
5 PURSUANT TO A HOME LOAN OR BEFORE OTHER ACTION IS TAKEN TO SEIZE OR TRANSFER
6 OWNERSHIP OF PROPERTY SUBJECT TO A HOME LOAN, THE CREDITOR OR CREDITOR'S
7 ASSIGNEE OF THE LOAN SHALL DELIVER TO THE BORROWER A NOTICE OF THE RIGHT TO
8 CURE THE DEFAULT INFORMING THE BORROWER OF ALL OF THE FOLLOWING:

9 1. THE NATURE OF THE DEFAULT.

10 2. THE BORROWER'S RIGHT TO CURE THE DEFAULT BY PAYING THE SUM OF MONEY
11 REQUIRED IF A CREDITOR OR ASSIGNEE ACCEPTS ANY PARTIAL PAYMENT MADE OR
12 TENDERED IN RESPONSE TO THE NOTICE. IF THE AMOUNT NECESSARY TO CURE THE
13 DEFAULT WILL CHANGE WITHIN THIRTY DAYS OF THE NOTICE, DUE TO THE APPLICATION
14 OF A DAILY INTEREST RATE OR THE ADDITION OF LATE FEES, THE NOTICE SHALL GIVE
15 SUFFICIENT INFORMATION TO ENABLE THE BORROWER TO CALCULATE THE AMOUNT AT ANY
16 POINT WITHIN THE THIRTY DAY PERIOD.

17 3. THE DATE BY WHICH THE BORROWER MAY CURE THE DEFAULT TO AVOID A
18 COURT ACTION, ACCELERATION AND INITIATION OF FORECLOSURE OR OTHER ACTION TO
19 SEIZE THE PROPERTY, WHICH SHALL BE AT LEAST THIRTY DAYS AFTER THE DATE THE
20 NOTICE IS DELIVERED, AND THE NAME, ADDRESS AND TELEPHONE NUMBER OF A PERSON
21 TO WHOM THE PAYMENT OR TENDER SHALL BE MADE.

22 4. IF THE BORROWER DOES NOT CURE THE DEFAULT BY THE DATE SPECIFIED,
23 THE CREDITOR OR ASSIGNEE MAY FILE AN ACTION FOR MONEY DUE OR TAKE STEPS TO
24 TERMINATE THE BORROWER'S OWNERSHIP IN THE PROPERTY BY REQUIRING PAYMENT IN
25 FULL OF THE HOME LOAN AND COMMENCING A FORECLOSURE PROCEEDING OR OTHER ACTION
26 TO SEIZE THE PROPERTY.

27 5. THE NAME, ADDRESS AND TELEPHONE NUMBER OF A PERSON WHOM THE
28 BORROWER MAY CONTACT IF THE BORROWER DISAGREES WITH THE ASSERTION THAT A
29 DEFAULT HAS OCCURRED OR THE CORRECTNESS OF THE CALCULATION OF THE AMOUNT
30 REQUIRED TO CURE THE DEFAULT.

31 B. IF A CREDITOR OR ASSIGNEE ASSERTS THAT GROUNDS FOR ACCELERATION
32 EXIST AND REQUIRES THE PAYMENT IN FULL OF ALL SUMS SECURED BY THE HOME LOAN,
33 THE BORROWER, OR ANYONE AUTHORIZED TO ACT ON THE BORROWER'S BEHALF, AT ANY
34 TIME BEFORE THE TIME TITLE IS TRANSFERRED BY MEANS OF FORECLOSURE, BY
35 JUDICIAL PROCEEDING AND SALE OR OTHERWISE, MAY CURE THE DEFAULT AND REINSTATE
36 THE HOME LOAN. CURE OF THE DEFAULT SHALL REINSTATE THE BORROWER TO THE SAME
37 POSITION AS IF THE DEFAULT HAD NOT OCCURRED AND SHALL NULLIFY, AS OF THE DATE
38 OF THE CURE, AN ACCELERATION OF ANY OBLIGATION UNDER THE HOME LOAN ARISING
39 FROM THE DEFAULT.

40 C. TO CURE A DEFAULT UNDER THIS SECTION, A BORROWER SHALL NOT BE
41 REQUIRED TO PAY ANY CHARGE, FEE OR PENALTY ATTRIBUTABLE TO THE EXERCISE OF
42 THE RIGHT TO CURE A DEFAULT, OTHER THAN THE FEES SPECIFICALLY ALLOWED BY THIS
43 SUBSECTION. THE BORROWER SHALL NOT BE LIABLE FOR ANY ATTORNEY FEES RELATING
44 TO THE DEFAULT THAT ARE INCURRED BY THE CREDITOR OR ASSIGNEE PRIOR TO OR
45 DURING THE THIRTY DAY PERIOD SET FORTH IN SUBSECTION A OR FOR ANY FEES IN

1 EXCESS OF ONE HUNDRED DOLLARS THAT ARE INCURRED BY THE CREDITOR OR ASSIGNEE
2 AFTER THE EXPIRATION OF THE THIRTY DAY PERIOD BUT BEFORE THE TIME THE
3 CREDITOR OR ASSIGNEE FILES A FORECLOSURE OR OTHER JUDICIAL ACTION OR TAKES
4 OTHER ACTION TO SEIZE OR TRANSFER OWNERSHIP OF THE REAL ESTATE. AFTER THE
5 CREDITOR OR ASSIGNEE FILES A FORECLOSURE OR OTHER JUDICIAL ACTION OR TAKES
6 OTHER ACTION TO SEIZE OR TRANSFER OWNERSHIP OF THE REAL ESTATE, THE BORROWER
7 SHALL BE LIABLE ONLY FOR ATTORNEY FEES THAT ARE REASONABLE AND ACTUALLY
8 INCURRED BY THE CREDITOR OR ASSIGNEE, BASED ON A REASONABLE HOURLY RATE AND A
9 REASONABLE NUMBER OF HOURS.

10 D. IF A DEFAULT IS CURED BEFORE THE INITIATION OF ANY ACTION TO
11 FORECLOSE OR TO SEIZE THE RESIDENCE, THE CREDITOR OR ASSIGNEE SHALL NOT
12 INSTITUTE A PROCEEDING OR OTHER ACTION FOR THAT DEFAULT. IF A DEFAULT IS
13 CURED AFTER THE INITIATION OF ANY ACTION, THE CREDITOR OR ASSIGNEE SHALL TAKE
14 SUCH STEPS AS ARE NECESSARY TO TERMINATE THE ACTION.

15 E. A CREDITOR OR A CREDITOR'S ASSIGNEE OF A HOME LOAN THAT HAS THE
16 LEGAL RIGHT TO FORECLOSE SHALL USE, IN A FORECLOSURE, THE JUDICIAL
17 FORECLOSURE PROCEDURES PROVIDED BY LAW. IN SUCH A PROCEEDING, THE BORROWER
18 MAY ASSERT THE NONEXISTENCE OF A DEFAULT AND ANY OTHER CLAIM OR DEFENSE TO
19 ACCELERATION AND FORECLOSURE, INCLUDING ANY BASED ON A VIOLATION OF THIS
20 CHAPTER, THOUGH NO SUCH CLAIM OR DEFENSE SHALL BE DEEMED A COMPULSORY
21 COUNTERCLAIM.

22 F. THIS SECTION APPLIES ONLY TO HOME LOANS THAT WERE HIGH COST HOME
23 LOANS AT THE TIME OF ORIGINATION.

24 6-1605. Prohibited actions

25 A PERSON SHALL NOT DO ANY OF THE FOLLOWING WITH THE INTENT TO AVOID THE
26 APPLICATION OR PROVISIONS OF THIS CHAPTER:

- 27 1. DIVIDE A LOAN TRANSACTION INTO SEPARATE PARTS.
- 28 2. STRUCTURE A HOME LOAN TRANSACTION AS AN OPEN-END LOAN WHEN THE LOAN
29 WOULD HAVE BEEN A HIGH COST HOME LOAN IF THE LOAN HAS BEEN STRUCTURED AS A
30 CLOSED-END LOAN.
- 31 3. PERFORM ANY OTHER SUBTERFUGE TO AVOID THE APPLICATION OF THIS
32 CHAPTER.